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CONSTITUTIONAL KINSHIP BETWEEN IRAN AND THE SOVIET UNION

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I. INTRODUCTION

Despite its brutality and blatant violations of international law and human rights, the Islamic Revolution in Iran, which is observing its tenth anniversary in 1989, has produced a constitution that comparative scholars will find both educational and intriguing. It is educational because it constructs a modern legal structure to house traditional Islamic values; it is intriguing because it attempts to carve out a new identity for an Islamic state built upon the idea of Islamic egalitarianism. The Iranian Constitution incorporates the principles of socialist justice and roots them into the framework of Islamic values, as if these principles had always been inherent to Islamic orthodoxy. Thus the Iranian Constitution, drafted and enacted by none other than the hard-core Islamic clergy, is founded upon the thesis that an Islamic state, no matter how fundamentalist its orientation or origin, is essentially an egalitarian state—but rooted of course in the will of God.¹ According to the Iranian vision of Islam, a socialist state without God corrupts and subverts the course of human development, as does a capitalist state where accumulation of wealth and maximization of profit become the center of human attention.² While rejecting both secular socialism and corruptive capitalism, the Iranian Constitution gives new meaning to the concept of “Islamic socialism” by attempting to synthesize socialist justice with Islamic standards.³

Islamic socialism, some have argued, is a phrase without meaning, a contradiction in terms, as it combines Islam and socialism, which are inherently incompatible.⁴ For example, Islam focuses upon creating a

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1. IRANIAN CONST. art. 2, para. 1, §§ 1, 3, 6.

2. *Id.* preamble (the economy is a means, not an end).

3. M. FISCHER, *IRAN: FROM RELIGIOUS DISPUTE TO REVOLUTION* 231 (1980). “It has been well said that the Western revolutionary tradition stresses the individual freedom, sometimes at the expense of economic justice, that the Eastern (Communist) revolutionary tradition stresses economic justice at the expense of freedom, and that the Shi’ite promise is one of combining freedom and justice.” *Id.*

4. M. KHADDURI, *THE ISLAMIC CONCEPTION OF JUSTICE* 222 (1984).

community to serve God;⁵ but socialism, at least in its original Marxist sense, rejects religion as a palliative, which confuses and retards the dynamics of class struggle.⁶ Since total submission to God is the central part of Islamic faith, Islam may never be reconciled with socialism which rejects God as a reactionary human artifact. From a Marxist viewpoint, it may be argued that even if Islam contains some egalitarian precepts, the fact remains that over the centuries Islam has been the religion of both the rich and the poor, the privileged and the wretched, the oppressor and the oppressed. This shows that Islam has failed to generate among its followers class consciousness and dialectical understanding of economic relations, which is the foundation of socialist thought.⁷ Accordingly, Islam is at best irrelevant to the economic struggle that socialism undertakes; at worst, it is a reactionary weapon that capitalists may use to blunt any socialist reconstruction in an Islamic society.⁸

These critics make good points. Islamic socialism is a discomfiting phrase—almost a linguistic oddity—which blends together in the same breath two militant and seemingly divergent ideologies, by ignoring rather unabashedly the differences that exist between them. The term “Islamic socialism” therefore has failed to muster support in the Islamic community. More palatable labels such as “Islamic equilibrium” and “Islamic egalitarianism,” however, have been proposed to facilitate the joining of Islamic standards with modern egalitarian principles.⁹ While the term Islamic socialism remains a red herring, the concept underlying the term continues to assert itself in many, if not all, Islamic states.¹⁰

Of course, total reconciliation between Islam and socialism is impossible. But there are areas where the two might be in harmony. Even though no complete synthesis of Islamic and socialist standards of justice has yet emerged,¹¹ almost all Islamic countries have incorporated into their economic systems some egalitarian measures without renouncing or compromising Islamic standards.¹² Islamic egalitarianism joins together two powerful ideas, one stressing human spirituality, the

5. *Id.* at 72-76.

6. H. COLLINS, *MARXISM AND LAW* 4 (1984) (Marxism rejects spiritual revelation as a source of social change and insists that the material conditions of life determine the future path of human civilization).

7. M. RODINSON, *ISLAM AND CAPITALISM* 214-35 (1973).

8. *Id.*

9. *Id.*

10. A. HOURANI, *ARABIC THOUGHT IN THE LIBERAL AGE 1798-1939*, at 299 (1962).

11. M. KHADDURI, *supra* note 4, at 223.

12. *Id.*

other distributive justice. The idea of joining religion with social justice is neither profound nor original; yet, its special appeal lies in its revival and not in its novelty, particularly for those Islamic societies which want to maintain their separate identity in a world divided between capitalists and socialists.¹³ The most recent and perhaps the most powerful endorsement of Islamic egalitarianism has taken place in Iran.¹⁴ Islamic egalitarianism embodied in the Iranian Constitution is an ideology.¹⁵ Its goal is to create a prosperous society free of economic exploitation. Its ultimate aim, however, is not simply to satisfy the material needs of man, but to subject him to the will of God.¹⁶ It rejects the notion that human behavior is motivated by individual self-interest;¹⁷ instead, it emphasizes virtue and provides a strong and stable moral structure to give meaning and direction to human activity.¹⁸ Above all, it restores a permanent relationship between man and God. Thus, Islamic egalitarianism is a spiritual ideology. In this sense, it is distinguishable from secular socialism that considers the human relationship with God irrelevant, if not detrimental, to human progress and human excellence.¹⁹

While spiritual restoration of man remains the distinctive goal of Islamic egalitarianism (as the Iranian Constitution repeatedly emphasizes), it shares several characteristics with secular socialism. In order to explore these shared characteristics, this Article examines the principles embodied in the Iranian Constitution and compares them with those incorporated in the 1977 Soviet Union Constitution (Soviet Union Constitution).²⁰ Of course, these constitutions are founded upon

13. J. VOLL, *ISLAM: CONTINUITY AND CHANGE IN THE MODERN WORLD* 158-65 (1982) (the author explains the historical evolution of socialist radicalism in Islamic states and points out how Moslem scholars paved the way for receiving Marxist ideas into Islam).

14. The Iranian Constitution does not employ the phrases Islamic socialism or Islamic egalitarianism. In fact, Iran may resent the assertion that its constitution is based upon Islamic egalitarianism. The Iranian clergy may argue that Islam offers a complete way of life and, therefore, it does not need any additive concept such as egalitarianism.

15. Ideology may be defined as "a critique of a given sociopolitical order that simultaneously describes that order and calls upon its members either to defend and preserve it or to overthrow and transform it." Humphreys, *The Contemporary Resurgence in the Context of Modern Islam*, in *ISLAMIC RESURGENCE IN THE ARAB WORLD* 69 (A. Dessouki ed. 1982).

16. IRANIAN CONST. art. 2, para. 1, §§ 1, 3.

17. See generally J. PLAMENATZ, *KARL MARX'S PHILOSOPHY OF MAN* (1975) (Marxism rejects the notion that human nature is essentially selfish).

18. IRANIAN CONST. art. 3, § 1.

19. H. COLLINS, *supra* note 6, at 4.

20. Because the purpose of this Article is to identify in a broad sense the similarities that exist between the two constitutions, no attempt is made to explain the nuances that each constitution may contain. In addition, both constitutions are examined at the tex-

fundamentally different ideologies: the Soviet Constitution is designed to construct a classless communist society where the church is separated from the state, and the school from the church; the Iranian Constitution aims at creating an environment favorable to the development of moral virtues where the state plays a constructive role in the evolution of mankind leading toward God.²¹ This is perhaps the most significant contradiction between secular socialism and Islamic egalitarianism. But despite these divergent visions, there exist striking similarities between the two constitutions, particularly in areas of the state-run economy, governmental authority, distributive justice, civil and political freedoms and foreign policy. Recently, under Mikhail Gorbachev's doctrines of *Perestroika* and *Glasnost*, the 1977 Soviet Union Constitution has been amended to effect some structural changes in the government and to relax control over civil and political freedoms. This Article, however, compares the Iranian Constitution with the original 1977 Soviet Union Constitution without new amendments. This comparison is more meaningful because at the time the Iranian Constitution was drafted and promulgated, the 1977 Soviet Union Constitution was intact in its original form and text. In other words, if the 1977 Soviet Union Constitution inspired the drafters of the Iranian Constitution, any new amendments to the 1977 Soviet Union Constitution, which have been made after the promulgation of the Iranian Constitution, are irrelevant to the extent that they did not influence the drafting of the Iranian Constitution.

Just like the Soviet Union Constitution, the Iranian Constitution possesses the following attributes. First, the Iranian Constitution rejects capitalistic modes of production and prohibits concentration of wealth in private hands.²² It allows the state to own the main means of production for systematic and well-planned growth and management of economic forces.²³ Accordingly, it subordinates individual economic activity to social interests and egalitarian principles.²⁴

Second, it allows the state to institute a form of government in which the ultimate decision-making authority remains vested in the guardians of ideology who are able and willing to carry out social and

tual level and, therefore, this Article does not provide any insights into the historical, cultural or political context in which these constitutions were framed. The reader may also keep in mind that constitutions are often inspirational documents and they do not necessarily reflect the existing realities. Thus, there may be a gap between law on paper and law in action.

21. IRANIAN CONST. art. 2, para. 1, § 3.

22. *Id.* art. 43.

23. *Id.* arts. 43-45.

24. *Id.* arts. 43-44.

economic policies consistent with egalitarian justice.²⁵ Democratic institutions such as an elected legislature and executive are not allowed to subvert the course of social and economic development.²⁶

Third, the Iranian Constitution incorporates the principles of distributive justice and grants citizens basic social and economic protection. It furnishes all citizens with basic social and economic rights including the right to work, the right to education and the right to housing. Just like the Soviet Union Constitution, the Iranian Constitution assumes the responsibility to provide each citizen with the basic necessities of a decent and dignified life.²⁷

Fourth, it recognizes civil and political freedoms of individuals, but subjects these freedoms to communitarian interests and moral standards.²⁸ Thus, while individual enjoy freedoms of speech, religion and association, they may not use these freedoms to reject fundamental principles of collective morality or to undermine social and economic policies.²⁹

Fifth, just as the Soviet Union Constitution builds, promotes and defends world socialism, the Iranian Constitution advocates the bringing together of all Islamic societies to join them into one grand Islamic community. This espoused Islamic solidarity hopes to establish a divine order under which the oppressed upon the earth shall rise up for their rights and regain their lost leadership.³⁰

If Islamic egalitarianism as embodied in the Iranian Constitution succeeds in establishing similar constitutional regimes in Islamic states other than Iran, interesting new developments might take place on the world scene. For example, close ties might develop between socialist and Islamic communities, posing new international problems for the West. On the other hand, it is also likely that those Soviet Republics, which are predominantly Moslem, may begin to reject secular socialism in favor of Islamic egalitarianism, thus destabilizing both the ideology and the boundaries of the Soviet Union. While these questions are important, this Article does not explore the impact of Islamic egalitarianism on future international events. Rather, it examines shared characteristics that exist between the constitutions of Iran and the Soviet Union. This constitutional kinship between Iran and the Soviet Union highlights the compatibility that the Iranian Constitution has found between Islamic standards and socialist principles, and enhances un-

25. *Id.* art. 91.

26. *See infra* notes 75-102 and accompanying text.

27. *See infra* notes 103-36 and accompanying text.

28. *See infra* notes 137-61 and accompanying text.

29. *See infra* notes 146-61 and accompanying text.

30. *See infra* notes 162-76 and accompanying text.

derstanding of Islamic egalitarianism.

II. OWNERSHIP OF THE MEANS OF PRODUCTION

Over the centuries, the concept of economic justice has intrigued human societies. Given the scarcity of economic and social goods, there have always been societies in which part, if not a majority, of the population lived in poverty. Even though economic inequality is still a fixture of human civilization, almost all modern societies have shown some commitment to alleviate the condition of the poor.³¹ On the other hand, new ideologies have emerged in human thought that give the poor a militant consciousness to protest against systems built upon privileges and deprivations. Socialist thought, for example, stresses the idea of a unified movement against the private ownership of the means of production that it considers to be the major source of economic injustice.³² Even though one may question whether socialism is an effective method to bring about social equality and prosperity, socialist thought offers a form of rebellion against economic oppression.³³

Although Islam does not offer a coherent theory of economic justice, it prescribes general guidelines that Moslems may follow in their economic transactions and economic relations. To understand the Islamic conception of economic justice, Islam may first be distinguished from other religions that prohibit or discourage any form of economic activity, creating a belief among their followers that God will provide them with their daily meals.³⁴ Islam allows commercial activity, and merchants have always been held in respect in Islamic communities.³⁵ Moreover, there is nothing in Islam that prohibits private ownership; in fact, the Koran lays down the rules of inheritance.³⁶ The stiff punishment that the Koran prescribes for stealing further shows that Islam protects private property.³⁷ Even though Islam allows acquisition of private property, it embodies several egalitarian principles. For example, it chides with contempt the concentration of wealth in private

31. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966). This covenant recognizes rights such as the right to food, work, housing and medical care. *See id.*

32. H. COLLINS, *supra* note 6, at 102-03.

33. *See generally* G. COHEN, KARL MARX'S THEORY OF HISTORY: A DEFENCE (1978).

34. M. RODINSON, *supra* note 7, at 14.

35. In Iran, for example, merchants cooperated with the clergy in opposing the Shah's regime and made voluntary contributions to finance anti-government action. *See* M. PESARAN, IRAN: A REVOLUTION IN TURMOIL 16-17 (H. Afshar ed. 1985).

36. *See Koran* 2:180, 240; 4:7-9, 11-12, 19, 33, 176.

37. *Id.* 5:38. (as to thief, male or female, cut off his or her hands).

hands³⁸ and prohibits charging excessive interest on loans made to the needy.³⁹ It mandates that the employer pay wages to the laborer⁴⁰ and that Muslims set aside every year a prescribed part of their savings for the welfare of the poor.⁴¹ These rudimentary, though important, principles may be interpreted and extended to suggest that Islam emphasizes an egalitarian economic system.

But Islamic egalitarianism does not answer the more critical question of who should control the means of production—a question central to the debate between capitalism and socialism. Since private property is protected in Islam, a good case may be made that Islam does not oppose private ownership of the means of production. On the other hand, it may be argued with equal force that Islam is incompatible with capitalism which encourages concentration of wealth and maximization of profit. Whether Islam is compatible with socialism or capitalism is a question that may not have a precise answer.

The Iranian Constitution rejects both capitalism and Godless socialism.⁴² And yet, it has taken a major step toward bringing Islam closer to socialist principles of production and distribution. In fact, it establishes an economic system quite similar to that of the Soviet Union. For example, the Iranian Constitution embraces a conception of Islam that allows the Islamic state to control the main means of production.⁴³ And the reason the Iranian Constitution prohibits concentration of wealth in private hands⁴⁴ is to assure that the community as a whole, and not just part of the population, receives the fruits of the economy. It is in this context that a comparative study of the Soviet and the Iranian conceptions of ownership provides useful insights into the Iranian attempt to found its economy upon a mixture of Islamic and socialist principles.

Article 10 of the Soviet Union Constitution states that socialist ownership of the means of production is the foundation of the economic system.⁴⁵ The principal form of socialist property is the property that the state owns. This includes the land, its minerals, waters and forests; the basic means of production in industry, construction and agriculture; means of transport and communication; banks; most urban

38. *Id.* 3:180; 4:37; 47:37,38.

39. *Id.* 2:275-76, 278-80; 3:130.

40. *Id.* 18:76-78; see also M. RODINSON, *supra* note 7, at 14.

41. *Koran* 2:43, 110, 177, 277; 4:162.

42. IRANIAN CONST. preamble (the economy is a means, not an end).

43. *Id.* art. 44.

44. *Id.* art. 43, § 2.

45. KONST. SSSR art. 10, para. 1.

housing; and other property necessary for state purposes.⁴⁶ In theory, state property belongs to all the people; in reality, the state owns it, protects it and provides conditions for its growth.⁴⁷ Since socialist property belongs to all, no individual may use such property for personal gain or other selfish ends.⁴⁸

Even though individual citizens are excluded from the ownership of socialist property, they have the constitutional protection to own personal property, which includes articles of everyday use, a house and earned savings.⁴⁹ They may also be granted the use of plots of land for growing fruit and vegetables, for keeping livestock and poultry, or for building an individual dwelling.⁵⁰ Article 13 of the Soviet Union Constitution, however, requires the holders of such plots to make rational use of the land and seek assistance from the state in working their small-holdings.⁵¹ Article 17 permits some private economic activity in handicrafts, farming and the provision of services for the public. Such private initiatives are regulated by law to ensure that they serve the interests of society.⁵² The concept of personal property is based on the principle of earned income;⁵³ therefore, in no case may personal property be used as a means of deriving unearned income.⁵⁴ Yet consistent with these legal restrictions, individuals may own and even inherit personal property.

The Iranian Constitution does not employ the phrase "socialist property." Nonetheless, Article 44 of the Iranian Constitution creates a

46. *Id.* art. 11.

47. *Id.*; see J. RESHETAR, *THE SOVIET POLITY* 227-28 (1978).

48. KONST. SSSR art. 10.

49. *Id.* art. 13, para 1; see Butler, *Soviet Law* 172 (1983).

50. KONST. SSSR art. 13, para. 2.

51. *Id.* art. 13, para. 2; see also A. UNGER, *CONSTITUTIONAL DEVELOPMENT IN THE USSR* (1982):

It is well known that subsidiary farming has filled large gaps in Soviet agricultural output, providing in some cases as much as half the total produce marketed. What is perhaps less well known is that the share of the urban population in the private agricultural sector has been steadily increasing, and, in both cultivated area and output, is now roughly equal to that of the collective farmers. The constitution acknowledges this development and, in a sentence added in the final version of article 13, even enjoins the state and the collective farms to assist in the running of subsidiary farming.

Id. at 189. But see J. RESHETAR, *supra* note 47, at 227 ("The denial of freedom of economic enterprises, except on a most limited individual scale, has made nearly all citizens the equivalent of government employees, and very few are permitted to be self-employed.")

52. KONST. SSSR art. 17.; see A. UNGER, *supra* note 51, at 190.

53. KONST. SSSR art. 13, para. 1.

54. *Id.* art. 13, para. 3.

huge public sector that the state owns and administers. State property includes all large-scale and major industries, major mineral resources, banking and insurance; means of transport and communication including aviation, shipping, railroads, radio, television and telephone services; energy, dams and large-scale irrigation networks; and foreign trade.⁵⁵ Just like state property in the Soviet Union, state property in Iran belongs to the people, but it is the state that owns and administers it.⁵⁶ It is here that the Iranian Constitution brings Islam and socialism in close proximity; in the name of Islam, it grants the state ownership of the main means of production and excludes private activity in fundamental economic spheres.

Next, the Iranian Constitution adopts a conception of private ownership which seems a little broader than that which exists in the Soviet Union, but the close kinship between the two is evident.⁵⁷ For example, individuals may engage in agriculture, animal husbandry, industry, trade and services;⁵⁸ and they may retain the fruits of their legitimate business and labor.⁵⁹ Private ownership may not be used, however, as a pretext to deprive others of the opportunity to work.⁶⁰ Further, these concepts of personal property and private initiative are fettered with several restrictions similar to ones found in the Soviet Union Constitution. For example, private ownership is protected by law on the condition that it contributes to the economic growth and progress of the country, and that it does not harm society.⁶¹ In addition, Article 47 emphasizes that the private property must be legitimately achieved.⁶² Article 49 allows the government to confiscate private wealth resulting from illicit sources including usury, usurpation and misuse of govern-

55. IRANIAN CONST. art. 44, para. 2.

56. *Id.* art. 44, para. 5.

57. *Id.* art. 47.

58. *Id.* art. 44, para. 4.

59. *Id.* art. 46.

60. *Id.*

61. *Id.* art. 44, para. 5. For general comments on the changes in the Iranian economy as a result of the "new" system, see Karimi, *Economic Policies and Structural Changes Since the Revolution*, in *THE IRANIAN REVOLUTION AND THE ISLAMIC REPUBLIC* 32-53 (1986); H. AFSHAR, *IRAN: A REVOLUTION IN TURMOIL* 220-40 (1985):

After four years of Islamic government in Iran the deep contradictions of Shiia ideology have remained unresolved. The revolution was to help the poor and yet remain within a theoretical framework that does not favour egalitarian measures nor provide any means for their implementation. Shiism is frequently seen as the religion of the oppressed, yet it does not oppose inequalities and does not provide for radical distribution of wealth.

Id. at 237-38.

62. IRANIAN CONST. art. 47.

ment contracts and transactions.⁶³

Article 44 of the Iranian Constitution allows private investments in agriculture, animal husbandry, industry, trade and services.⁶⁴ But this individual freedom to do business, though greater than that available in the Soviet Union, may not be confused with the freedom that individuals have in a market economy such as that of the United States. The principles embodied in the Iranian Constitution empower the state to control the economy. First, state ownership of major industries and means of transport and communications reject the notion of a market economy. Second, private investments are expected to "supplement" economic activities of the state.⁶⁵ Thus, private initiatives seem to have been subordinated to the state economic plan. Third, the constitution prohibits extravagance and wastefulness in all matters related to the economy, including consumption, investment, production, distribution and services.⁶⁶ This means that the state can intervene in private business decisions and may prohibit the manufacturing, distribution and consumption of products that it considers extravagant or wasteful.

It is interesting to note that both constitutions embrace the concept of collective/cooperative ownership.⁶⁷ This form of ownership is distinguishable from both private property and state property in that a group of individuals own a collective or a cooperative property. Article 12 of the Soviet Union Constitution allows collective farming and cooperative undertakings for the production of agriculture and other goods.⁶⁸ Likewise, Article 44 of the Iranian Constitution allows cooperative companies and institutions, established in both cities and the countryside, for the production and distribution of goods.⁶⁹

Thus, both constitutions create three forms of ownership: state property, collective property and private property. Even if the three forms of ownership existing in Iran and the Soviet Union may differ in detail, the conceptual framework seems identical. Both constitutions create an economic system in which the state owns the major means of production and the private initiative is limited and subject to the larger interests of society.

Furthermore, both constitutions regulate the effects of the eco-

63. *Id.* art. 49 (but confiscated wealth will be placed in the public treasury only if no legitimate owner can be identified).

64. *Id.* art. 44, para. 4.

65. *Id.*

66. *Id.* art. 43, § 6.

67. *Id.* art. 44; *cf.* KONST. SSSR art. 12.

68. KONST. SSSR art. 12.

69. IRANIAN CONST. art. 44, para. 3.

conomic system upon other spheres of human life. For example, both constitutions mandate that economic activities must not harm the environment. Article 18 of the Soviet Union Constitution states that the necessary steps must be taken to make rational use of natural resources and to preserve the purity of air and water and to improve the human environment.⁷⁰ Likewise, Article 50 of the Iranian Constitution forbids economic and other activities that pollute the environment or inflict irreparable damage on it; it further states that the preservation of the environment is a public duty.⁷¹ Both constitutions present the preservation of environment as an inter-generational question. Both invoke the needs of present and future generations to suggest that the present generation has a duty to preserve and the future generations have a right to inherit a clean environment.⁷²

Both constitutions state, almost in identical language, that the economic system is not merely a means to generate material wealth, it must also assist human beings in their overall growth and development. Article 15 of the Soviet Union Constitution points out that the supreme goal of social production under socialism is the fullest possible satisfaction of the people's growing material, cultural and intellectual requirements.⁷³ Similarly, Article 43 of the Iranian Constitution states that the Islamic economic system must provide individuals with sufficient opportunity and strength to engage in intellectual, political and social development.⁷⁴ It rejects economic systems in which the accumulation of wealth and the maximization of profit constitute an end in itself. Such economic goals are against Islamic principles; they corrupt human beings and subvert their spiritual and intellectual development.⁷⁵

III. THE HOLDERS OF STATE AUTHORITY

The communist revolution in the Soviet Union and the Islamic revolution in Iran have created similar forms of government in which the true holders of state authority shall be none other than the guardians of the revolution. In both systems, even though the legislature and the executive are comprised of elected officials, the real authority to legislate as well as to govern rests not with the elected officials but with those who would continue to protect and advance the cause of the

70. KONST. SSSR art. 18.

71. IRANIAN CONST. art. 50.

72. *Id.*

73. KONST. SSSR art. 15, para. 1.

74. IRANIAN CONST. art. 43, § 3.

75. *Id.* preamble (the economy is a means, not an end).

revolution. This structure of authority is distinguishable from representative democracy, which offers a form of government rooted in the will of the people but does not guarantee the perpetuation of the will of the revolution. In a democracy, since the outcome of popular elections is unpredictable, there is no assurance that elected officials will continue to support the revolution. In fact, any form of government that derives its authority from periodic and genuine elections may not be suitable to protect and consolidate an ideological revolution. Revolutionary regimes in the Soviet Union and Iran have therefore designed similar structures of centralized authority that will protect them both from enemies of the revolution and from the people who may become disillusioned with the promise of their respective revolutions. They have established similar forms of government in which the state authority is vested in and devolves upon those who believe in the revolution and whom the revolution can trust.

In the Soviet Union, for example, the real decision-making authority, both in legislative and executive matters, vests in the Communist Party of the Soviet Union ("CPSU").⁷⁶ Founded by Lenin as the vanguard of the working class, the Party now presents itself as the party of the Soviet people as a whole.⁷⁷ Since the October Revolution, the Party has extended its guiding influence to all spheres of social life.⁷⁸ In the 1936 Constitution the Party is defined as the "leading core of all organizations of the working people," both government and non-government.⁷⁹ Likewise, Article 6 of the 1977 Constitution states that the Soviet Communist Party is the leading and guiding force of Soviet society: The Party determines the course of domestic and foreign policy, provides leadership to all state and public organizations and imparts a planned, systematic and theoretically substantiated character to the framework for the victory of communism.⁸⁰

76. M. GLENDON, M. GORDON, & C. OSAKWE, *COMPARATIVE LEGAL TRADITIONS* 715-22 (1985) [hereinafter M. GLENDON].

77. KONST. SSSR art. 6.

78. J. HAZARD, *THE SOVIET SYSTEM OF GOVERNMENT* 290 (1980). The Rules of the Communist Party of the Soviet Union state that "[i]deological and organizational unity, monolithic cohesion of its ranks, and high degree of conscious discipline . . . [constitute] an inviolable law of the CPSU . . . [Even though one may] discuss freely questions of . . . Part[y] polic[y], [the Rules reject] [a]ll manifestations of factionalism." *Id.* at 290-92. "Democratic centralism, [the principle of the organizational structure of the Party, mandates] subordination of the minority to the majority [and] [t]hat the decisions of [the] higher bodies are obligatory for lower bodies." *Id.* at 295-96.

79. KONST. SSSR art. 12 (1936).

80. KONST. SSSR art. 6, para. 2; see A. UNGER, *supra* note 51, at 185-86: "All these processes taking place in this country's life were led and continue to be led by the Communist party - the directing, organizing and mobilizing force of our society from the time

Even though the Council of Ministers of the Soviet Union is technically the supreme executive body,⁸¹ the actual authority resides in the Politburo of the CPSU.⁸² For example, all past and present chairmen of the Council of Ministers have been simultaneously full members of the Politburo of the CPSU.⁸³ In addition, the Party supervises and controls all appointments considered politically important.⁸⁴ In fact, all state and social organizations operate under close scrutiny of the Party.⁸⁵ This control over state organizations gives the Party the final executive authority both to provide policy directives and to supervise their execution.⁸⁶ Thus the Party in general and the higher Party officials in particular act as political guardians of the Soviet system.

The Party is not only the supreme executive, it is also the supreme legislature. Again, even though the Supreme Soviet of the Soviet Union is technically the supreme legislative body in the country,⁸⁷ the general guidelines regarding the future development of Soviet law are determined by the Party.⁸⁸ The laws enacted by the Supreme Soviet reflect and incorporate social, economic and political policies that the Party adopts. It is unlikely that the Supreme Soviet would enact a law to which the Party disapproves. The legislature enacts what the Party recommends and the judges uphold what the legislature enacts. The Soviet Constitution does not provide any mechanism by which judges may review laws for constitutionality. Since the laws the Supreme Soviet enacts always have the full approval of the Party, any judicial review of these laws would amount to challenging the authority of the Party. Hence, the system must reject, as it does, any notion of judicial review.

Just as the Communist Party is the nucleus of the Soviet system, the "eminent clergy" is the leading force of the Iranian society. The aims set forth in the Iranian Constitution, for example, are to be

of October to the present" (quoting Brezhnev's May, 24 1977 C. C. Plenum Speech); see also J. RESHETAR, *supra* note 47, at 133 ("The quasi-monopoly of power enjoyed by the Soviet Communist party has been jealously guarded."); cf. Maggs, *The Soviet Constitution: In Order to Form a More Perfect Dictatorship*, 10 HUM. RTS. 34, 36 (1982) ("[T]he apparent contradiction between Article 2 that provides that all power in the USSR belongs to the people, and Article 6 that makes the Communist Party the leading and guiding force of Soviet society.").

81. KONST. SSSR art. 128.

82. M. GLENDON, *supra* note 76, at 716.

83. *Id.* at 716 n.3.

84. *Id.* at 719.

85. *Id.*

86. *Id.*

87. KONST. SSSR art. 108.

88. M. GLENDON, *supra* note 76, at 718.

achieved through judgment made on a continuous basis by the "eminent clergy."⁸⁹ The Clergy occupies most of the institutional structure that the Iranian Constitution has created to mold social forces toward spiritual virtues based upon faith and piety and the struggle against all forms of vice and corruption.⁹⁰ For example, the ultimate governance and leadership of the nation will always devolve upon an eminent member of the Iranian Clergy, as has been the case with Imam Khomeini. If no one eminent member of the Clergy qualifies to be the Leader, then three or five eminent members of the Clergy will constitute the Leadership Council to exercise the authority of the Leader.⁹¹ The Leader/Leadership Council will have exclusive constitutional authority to fill in some of the most powerful positions including the supreme command of the armed forces and the supreme judicial authority of the country.⁹² The Leader/Leadership Council also has the authority to declare war.⁹³ Thus, the Iranian Clergy has secured its constitutional role as the Supreme Executive.

Furthermore, the Iranian Clergy has also retained the constitutional prerogative to monitor the legislative process. Article 94 of the Iranian Constitution requires that all legislation passed by the National Consultative Assembly,⁹⁴ an elected legislature, must be submitted for approval to the Council of Guardians.⁹⁵ The Council of Guardians consists of twelve members, six of whom must be members of the

89. IRANIAN CONST. art. 2, para. 2, § 1.

90. *Id.* art. 3, § 1. For a discussion of the clergy's rise to power and prominence in Iran, see Hooglund, *Social Origins of the Revolutionary Clergy*, in *THE IRANIAN REVOLUTION AND THE ISLAMIC REPUBLIC* 74. *see also; id.* at 258.

91. IRANIAN CONST. art. 107.

92. *Id.* art. 110.

93. *Id.* art. 110, § 3(e). The declaration of war and peace, and the mobilization of armed forces is to be based on the recommendation of the Supreme National Defense Council. This Council consists of seven members: the President of the Islamic Republic, an elected official who must be confirmed by the Leader/Leadership Council; the Prime Minister; the Minister of Defense; the Chief of the General Staff, who must be appointed by the Leader/Leadership Council; the Commander-in-Chief of the Corps of Guards of the Islamic Revolution, who must be appointed by the Leader/Leadership Council; and two advisors appointed by the Leader/Leadership Council. *Id.* art. 110, § 3(c). Since four of the seven members of the Supreme National Defense Council are the appointees of the Leader/Leadership Council, it may therefore be inferred that the Leader/Leadership Council will have the ultimate authority to declare war and peace.

94. *Id.* art. 94; *see also* Flanz, *Iran, A Comparative Analysis of the Constitution of the Islamic Republic of Iran*, in *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* 10 (1980) (despite several constitutional provisions which seem to vest great powers in the National Assembly, it can not really act with finality unless the Council of Guardians has examined the pending legislation).

95. IRANIAN CONST. art. 94.

Clergy; the other six Moslem jurists.⁹⁶ Thus, while the Clergy officially occupies half of the Council, the other half must be trained in Islamic jurisprudence. It seems highly likely that only persons with clerical training in Islamic jurisprudence will qualify as Moslem jurists. The composition of the Council of Guardians indicates that it is in fact a predominantly clerical institution.

The Council of Guardians has unprecedented constitutional authority. First, if there is no Council of Guardians in existence, any legislation passed by the National Assembly will lack the force of law.⁹⁷ This constitutional provision safeguards the existence of the Council of Guardians and assures that the Clergy will play a permanent and continuous role in reviewing the legislation passed by the National Consultative Assembly. Second, the Council of Guardians has the exclusive authority to interpret the constitution.⁹⁸ Third, it acts as the Supreme Constitutional Court that previews legislation for its constitutionality. In addition, the clerical members on the Council of Guardians have the exclusive authority to review whether or not the legislation passed by the National Assembly is compatible with Islamic principles.⁹⁹ These constitutional powers vest in the Clergy an authority not only to influence legislation but also to shape constitutional jurisprudence. Finally, the Council of Guardians determines whether the candidates for the presidency of the Republic have the requisite qualifications such as trustworthiness, piety, and a convinced belief in the fundamental principles of the Islamic Republic of Iran and the official school of thought of the country.¹⁰⁰ This authority to screen out "unfit candidates" for the presidency of the Republic (the second highest official position in the country after the leadership¹⁰¹) before election takes place¹⁰² makes the Council of Guardians a formidable clerical institution that has the prerogative to control, if not veto, the democratic process.

It appears that in molding the Iranian society toward an authentic Islamic community, the Iranian Clergy will play a permanent and pervasive role similar to the one that the Communist Party plays in the Soviet Union. Just as members of the CPSU are trained in Marxist-Leninist theory, members of the Clergy are trained in Islamic thought.

96. *Id.* art. 91.

97. *Id.* art. 93.

98. *Id.* art. 98.

99. *Id.* arts. 94, 96; *see also* Flanz, *supra* note 94, at 10.

100. IRANIAN CONST. art. 115.

101. *Id.* art. 113.

102. *Id.* arts. 110(d), 115; *see also* Flanz, *supra* note 94, at 1 ("If all these provisions are put together, it becomes obvious that a regime of clerical supremacy, a kind of 'Mullaharacy' has been institutionalized.").

Just as higher officials of the Party run the affairs of the Soviet Union, eminent members of the Clergy run the affairs of the Islamic Republic of Iran. Despite different visions of how their respective societies ought to function and develop—one leading toward communism, the other toward Islam—the Party in the Soviet Union and the Clergy in Iran seem to be parallel institutions: both are the vanguard of their respective ideologies, both are the “brain, the honor and the conscience of [their] epoch”¹⁰³; and, of course, both are vested with a quasi-monopoly of power.

IV. DISTRIBUTIVE JUSTICE

In economic and social areas, the primary object of distributive justice is to arrange social institutions so that fundamental economic rights and social advantages are equitably distributed among citizens. The economic prosperity of a given society may be measured by the total wealth that society as a whole has accumulated. But a wealthy society may or may not be fair in distributing among its citizens the economic benefits and opportunities available in the system. If the distribution of basic economic and social rights is unfair, distributive justice attempts to correct it.

Socialist thought has played a leading role in raising modern consciousness regarding the importance of distributive justice. It rejects a socioeconomic system which denies part of the population basic economic and social rights such as work, housing, education and medical care. While most societies accept some aspects of distributive justice, socialist countries have been at the forefront in advocating the concept. Almost all socialist countries recognize basic economic and social rights of their citizens. In fact, they have launched an international campaign to persuade other states to acknowledge that economic and social rights are fundamental rights. By contrast, states with market economies resist a full recognition of such rights.¹⁰⁴

Without acknowledging the socialist genesis of social and economic rights, the Iranian Constitution invokes Islam to justify their protection. Thus, the Iranian Constitution assimilates these rights into the

103. J. HAZARD, *supra* note 78, at 289 (quoting from Article VII of the PROGRAM OF THE COMMUNIST PARTY OF THE SOVIET UNION).

104. In a market-oriented democracy, elected officials make political decisions and pass laws, but market forces determine the economic fortune or misfortune of individuals. Market economies are Janus-faced: both humane and cruel at the same time. The people living under market economies enjoy the freedom to accumulate personal wealth, but they run the risk of being without a job, without a house or even without food. In order to control the extremes of a free market, almost all modern states regulate their economies. See D. SALVATORE, MICROECONOMICS THEORY AND APPLICATIONS 1-3 (1986).

Islamic conception of justice, suggesting that such rights may be protected within an Islamic state—without embracing socialism. On the other hand, by protecting these rights, the Iranian Constitution seems to propose to other Islamic states that even if these rights are rooted in socialist doctrine, Islamic standards of justice are not opposed to the protection of these rights; and if with respect to these rights, Islam and socialism are compatible, so be it.¹⁰⁵

The protection of economic and social rights in Iran, however, does not appear to be as extensive as it is in the Soviet Union. This discrepancy may have its roots in the different levels of development between the two countries. After all, the Soviet Union has many more resources than Iran does and, therefore, it can provide its citizens with better economic and social protection. At this time, Iran does not have adequate resources to provide every citizen with first-rate medical care, adequate housing and meaningful higher education. A firm commitment on the part of the Islamic state to provide these basic rights, however, indicates that Islamic egalitarianism, at least in theory, is as protective of these rights as is secular socialism. The following analysis shows that Islam in Iran and socialism in the Soviet Union have almost identical goals in the protection of economic and social rights.

A. The Right to Work

Socialist economy is founded upon the principle of socially useful work, and Articles 40 and 60 of the Soviet Union Constitution state in unequivocal terms that citizens of the Soviet Union have the right as well as the duty to work.¹⁰⁶ The socialist state has the right to demand labor from its citizens, just as citizens have the right to demand employment from the socialist state. This reciprocal obligation between the socialist state and its citizens makes work the core value of the socialist society. In fact, the social worth of an individual depends upon the social utility of the work that the individual does: work deter-

105. According to the Iranian Constitution, capitalism is the source of many social evils; it causes the intellectual and spiritual degeneration of society as a whole; and it deprives part of the population of its basic human dignity by denying it fundamental economic and social protection. Just like socialist states, therefore, Islamic Iran has seized the means of production and vital national resources in order to provide citizens with the necessary means of living, including work, housing, education and medical care. See IRANIAN CONST. arts. 43, 44.

106. KONST. SSSR arts. 40, 60; see also M. GORBACHEV, PERESTROIKA 30 (1987) ("There is virtually no unemployment. The state has assumed concern for ensuring employment. Even a person dismissed for laziness or a breach of labor discipline must be given another job.").

mines a person's status in society.¹⁰⁷ Moreover, socialist work is not simply a means to make a living, it is the source of social wealth and of the well-being of the people.¹⁰⁸ Therefore, evasion of socially useful work is incompatible with the principles of the socialist society.

"From each according to his abilities, to each according to his work" is another socialist principle incorporated in the Soviet Constitution.¹⁰⁹ "From each according to his abilities" implies that the individual would work according to the abilities he has. Individuals have the right to choose their trade or profession in accordance with their inclinations, abilities, training and education.¹¹⁰ This right is ensured by providing free vocational and professional training. The state also assists individuals in improvement of skills needed for a job, and provides job placement.¹¹¹ The freedom to choose a job, however, is available only if the job sought is socially needed. Even though social needs determine the nature and number of jobs, the freedom to choose a job is not totally illusory. After all, even in a market economy, all types of jobs are not always available. "To each according to his work" implies that remuneration for work would depend upon the quantity and quality of work; in other words, wages depend not only upon the amount of output, but also upon the complexity and quality of work. Nonetheless, the wages for any type of work do not fall below the state-established minimum.¹¹²

The right to work does not seem to be a core value under the Iranian Constitution. The constitutional provisions dealing with the right to work are less emphatic as compared to those of the Soviet Constitution. For instance, work in Iran does not determine a person's social status, as it does in the Soviet Union. Nonetheless, the Iranian Consti-

107. KONST. SSSR art. 14, para. 3.

108. *Id.*

109. *Id.* art. 14, para. 2.

110. *Id.* art. 40, para. 1.

111. *Id.* art. 40, para. 2; see Osakwe, *Soviet Human Rights Law Under the USSR Constitution of 1977: Theories, Realities and Trends*, 56 TUL. L. REV. 249, 268 (1982); see also J. HAZARD, *supra* note 78, at 212, suggesting that while the individual has a choice of seeking employment outside of governmental organizations, in addition to other systemic obstacles,

[s]uch private enterprise . . . suffers further discouragement from the personal income tax statutes. While all Soviet citizens are required to pay income tax graduated in accordance with the amount of their income, the private enterpriser is subjected to a higher rate than those employed by the state. . . . The separation of those who will eventually be favored as the technicians, the managers and the intellectuals generally, from those who must remain throughout their lives at the level of the manual laborer, occurs at an early age.

Id. at 214.

112. KONST SSSR art. 40, para. 1.

tution undertakes to build an economy that will create conditions for full employment. Just like the Soviet Union, the Iranian government controls a huge public sector, and thus it is able to provide significant employment. The constitution, however, requires the state to refrain from becoming a monopolistic employer.¹¹³ Thus, even though the state owns considerable means of employment, it is under no obligation to provide jobs to all. The provision seems to have been added to protect employment in the private sector, which is concomitantly prohibited from denying individuals the opportunity to work.¹¹⁴ To further expand the means of employment, cooperatives have been established to create jobs for those who are able to work but lack the means.¹¹⁵ The government may also grant interest-free loans to individuals, to help them establish small businesses.¹¹⁶ Thus, unlike the Soviet Union Constitution, the Iranian Constitution protects small enterprises owned by individuals, and thereby adds a touch of capitalism to its economic system. Yet the private sector remains limited in its scope, since Article 43 of the Iranian Constitution forbids the concentration of wealth in private hands.¹¹⁷

Article 28 of the Iranian Constitution grants citizens the right to choose employment provided it is not contrary to Islamic principles, the public interest, or the rights of others.¹¹⁸ Even though the government may create job opportunities bearing in mind the needs of society,¹¹⁹ the Iranian Constitution does not specifically espouse the concept of socially useful work. Nor does it create a duty to work. In fact, compelling anyone to engage in a particular job is prohibited.¹²⁰ On the other hand, while the Soviet Union Constitution undertakes to provide professional training and guidance to facilitate individuals finding jobs of their choosing, the Iranian Constitution assumes no such responsibility. The Iranian government, however, has a duty to provide every citizen with the opportunity to work, and to create equal conditions for obtaining it.¹²¹ In order to create equal conditions for employment, it may be argued, the government may have to provide assistance to those who have equal inclinations and abilities but lack the means to

113. IRANIAN CONST. art. 43, § 2.

114. *Id.* art. 43, § 3.

115. *Id.* art. 43, § 2.

116. *Id.*

117. *Id.* art. 43.

118. *Id.* art. 28, para. 1.

119. *Id.* art. 28, para. 2.

120. *Id.* art. 43, § 4.

121. *Id.* art. 28, para. 2.

perform the same job.¹²²

B. *The Right to Housing*

Both constitutions recognize the right to housing. In the Soviet Union, the right to housing is a vested right: the citizens have a right to demand and the state has an obligation to provide housing.¹²³ The Soviet state has undertaken a number of measures to provide housing to all. It develops new housing projects and manages the already existing socially-owned housing. Newly built dwellings are distributed among the people on a fair basis and under public control. The state encourages and provides assistance for cooperative and individual house construction. In addition, to make housing available, the state may fix low rents and low charges for utility services. Citizens are under an obligation to take good care of the housing allocated to them.¹²⁴

The Iranian Constitution also recognizes the right of every citizen and family to own a dwelling.¹²⁵ Perhaps due to limited resources, the state has not undertaken a positive obligation to provide housing to all. Thus, under the Iranian Constitution, the right to housing is not yet a vested right; it is at best an executory right that may vest in the future when the state will have sufficient resources to meet its obligation to all. The state, however, assumes the responsibility to implement this principle in stages, according priority to those whose need is the greatest, in particular the rural population and agricultural workers.¹²⁶ In addition, the constitution promises not to disturb an individual's existing residence.¹²⁷ Citizens may establish a residence in their preferred location.

C. *Health Care and Social Insurance*

Both constitutions confer on their citizens a right to health care and social insurance. The right to health care in the Soviet Union is ensured by free and qualified medical assistance provided by state

122. *Id.* art. 43, § 3. In this provision, there is some indication that the government might help individuals improve their skills.

123. KONST SSSR art. 44.

124. *Id.* art. 44, para. 2; see also Osakwe, *supra* note 111, at 270. But see J. RESHETAR, *supra* note 47, at 244 ("Government-operated housing provides a means of claiming that Soviet workers have a real income that is greater than their money income because much of the housing cost (above the nominal rents paid by tenants) is really a form of social benefit.").

125. IRANIAN CONST. art. 31.

126. *Id.*

127. *Id.* arts. 31, 33.

health facilities.¹²⁸ But the Soviet Constitution goes beyond simply providing medical treatment services to its citizens. It looks toward protecting the future health of its citizens through the development and improvement of safety and sanitation of the workplace and through carrying out broad prophylactic measures including the research to control disease and to ensure citizens a long and active life. It prohibits child labor¹²⁹ and provides special care for the health of the rising generation.¹³⁰ The right to social insurance has been granted to provide maintenance and care for the elderly, the sick, and the disabled. In addition, job placement is provided for the partially disabled. Maintenance is also provided to a family that has lost its breadwinner.¹³¹

Although the provision for health care and social security contained in the Iranian Constitution is much less detailed than its Soviet counterpart, it appears to confer similar benefits on Iranian citizens. The constitution promises to provide health services, medicine and medical care. Social security benefits are available on retirement, in old age and in the event of unemployment, disability and destitution. All these benefits constitute a universal right, and the government is under a constitutional obligation to assure the foregoing rights and financial protection by drawing on the national income and individual contributions.¹³²

D. *The Right to Education*

There is a right to education under both constitutions. In the Soviet Union, the right is ensured by free provision of all forms of education. Secondary education is compulsory for Soviet youth. Vocational and higher education emphasize the development of practical skills and production. In order to provide the means of education, the state has set up facilities for self-education as well as for extramural, correspondence and evening classes; it also provides free textbooks, state stipends and other grants. Furthermore, the students have the opportunity to attend schools where their native language is the medium of instruction.¹³³

128. KONST. SSSR art. 42, para. 2.

129. *Id.* While prohibiting child labor, it allows that children may do some physical work as part of the school curriculum. *Id.*

130. *Id.* For a general comment on health care services in the Soviet Union, see J. RESHETAR, *supra* note 47, at 245-46.

131. KONST. SSSR art. 43, para. 1.

132. IRANIAN CONST. art. 29.

133. KONST. SSSR art. 45, para. 2. On the right to education, see Osakwe, *supra* note 111, at 270-71 ("The right of Soviet citizens to free education, however, does not imply a

Likewise, the Iranian Constitution provides all citizens with free education and training through middle school. There is nothing in the constitution, however, that mandates compulsory education. Even though universal free education at all levels and the facilitation and expansion of higher education are the future goals,¹³⁴ it seems that Iran at the present time does not have the resources to provide elaborate facilities for free vocational and higher education.

While the Soviet Constitution recognizes and promotes several regional languages by allowing students to learn in their native tongues, the Iranian Constitution attempts to create a linguistic unity among its citizens. For instance, the official language and script of Iran is Persian, and schoolbooks are required to be in this language and script.¹³⁵ Schools, however, may use regional languages for teaching literature written in them.¹³⁶ Recognizing that Islamic learning and culture are deeply rooted in Arabic, the language of the Koran, the constitution mandates that Arabic must be taught in all classes from elementary school through middle school, and in all areas of study.¹³⁷

V. CIVIL AND POLITICAL FREEDOMS

For citizens of any country, civil and political freedoms (such as freedoms of speech, religion and association) are as important as economic and social rights. Although most modern states recognize the significance of both civil and political freedoms and social and economic rights, they are reluctant to provide the fullest possible protection to both; instead, they emphasize one or the other. Market-oriented

right to be admitted to any particular educational institution of their choice."); J. RESHETAR, *supra* note 47, at 273 ("While education is free and in theory accessible to all, in practice admission is limited to those who can compete effectively or whose families have influence and means."). When Article 45 (the right to education) is read in conjunction with Article 40, which provides the right to work for every citizen "with due account of the needs of society," the significance of the provision of both rights is minimized.

134. IRANIAN CONST. art. 30; *see also* H. AFSHAR, *supra* note 61, at 246-49 (suggesting that the only learning available to the citizens is that which furthers or does not appear to challenge the Islamic views). Afshar states:

Ironically technical subjects which depend largely on Western research and educational materials have now been declared sufficiently Islamic to be acceptable by the government, but Humanities which are rooted in the Iranian culture remain unacceptable. Part of the problem is, of course, the 2500 years of Iranian history which has been rejected by the religious establishment, partly because it pre-dates Islam, but ostensibly because it is a long history of oppressive royal rule and unacceptable to the revolutionary spirit of Iran today.

Id. at 249.

135. IRANIAN CONST. art. 15.

136. *Id.*

137. *Id.* art. 16.

democracies, for example, are willing to protect large civil and political freedoms, but fall short of acknowledging economic and social rights. Socialist states, on the other hand, guarantee economic and social rights, but curtail civil and political freedoms.

Even though the Islamic Republic of Iran does not claim to be a socialist state, its constitution, perhaps following the tradition of socialist states, puts several constraints on civil and political freedoms. These constraints are designed to defend and promote Islamic socialism. Just as the Soviet Constitution subordinates the exercise of freedoms of speech, religion and association to the attainment of communist goals, the Iranian Constitution subjects these freedoms to the advancement of both distributive justice and Islamic morality. Thus, in both Iran and the Soviet Union, citizens have the full freedom of speech to praise the ideology, but none to reject it. Such restrictions on civil and political rights are understandable because the Islamic regime in Iran, just like the communist regime in the Soviet Union, seems to be both self-righteous and fearful. It is self-righteous because it believes it has been founded upon an immutable truth (Islam), the rejection of which is sacrilegious; it is fearful because it believes it has been surrounded by enemies, the suppression of which is indispensable.

A. *Equal Protection of Laws*

The Soviet Constitution grants citizens equal protection of laws, without distinction of origin, social or property status, race or nationality, sex, education, language, attitude to religion, type and nature of occupation, domicile or other status.¹³⁸ This principle of equality protects equal rights of citizens in all fields of economic, political, social and cultural life. The Soviet Union is a heterogeneous country where citizens have diverse racial, linguistic and cultural backgrounds. Moreover, some regions in the Soviet Union are economically more developed than others. Under these conditions, the principle of equality has a special significance for less developed regions. In order to implement the principle of equality, the Soviet Constitution recognizes a policy of all-around development and drawing together of all regions and nationalities.¹³⁹ Furthermore, in order to achieve national solidarity, citizens are educated in the spirit of Soviet patriotism and socialist internationalism; and, any advocacy of racial or national exclusiveness, hostility or contempt is punishable by law.¹⁴⁰

Under the Soviet Constitution, women and men have equal

138. KONST. SSSR art. 34, para. 1.

139. *Id.* art. 36.

140. *Id.*

rights.¹⁴¹ In order to ensure gender equality, women and men have equal access to education and vocational and professional training. They also enjoy equal opportunities in employment, remuneration and promotion. Women with children have special protection: expectant mothers are granted paid leaves and other benefits; mothers with children receive assistance in job placement; and those with small children are entitled to reduced working time.¹⁴²

The Iranian Constitution also embodies the principle of equality without distinction as to ethnic, family or tribal origins; and, factors such as color, race and language do not bestow any privilege.¹⁴³ While all citizens enjoy equal protection of laws, the Iranian Constitution specifically mentions equality between men and women.¹⁴⁴ The principle of gender equality, however, is subordinated to Islamic standards. Even though Islamic standards recognize the equality of women in many areas of life, it is doubtful that Iranian women enjoy the same rights as Soviet women do.¹⁴⁵ Still, the Iranian Constitution promises to create an environment favorable to the personal growth of women and to restore their material and spiritual rights. It also promises to protect mothers, particularly during pregnancy and child-rearing. Moreover, special insurance is available for widows and aged and destitute women.¹⁴⁶

B. Freedom of Speech

The Soviet Constitution guarantees to Soviet Union citizens freedoms of speech and the press. The constitution ensures the exercise of these freedoms by the broad dissemination of information, and by the opportunity to use the press, television and radio.¹⁴⁷ The same provision that guarantees these freedoms, however, contains a "claw-back clause"¹⁴⁸ that limits their free exercise. This claw-back clause allows

141. *Id.* art. 35, para. 1.

142. *Id.* art. 35, para. 2.

143. IRANIAN CONST. art. 19.

144. *Id.* art. 20.

145. L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, *INTERNATIONAL LAW* 431 n.3 (1987) (Several Muslim states have made reservations to the U.N. Convention on Elimination of Discrimination Against Women, arguing that some provisions of this Convention are contrary to the Koran or Islamic law).

146. IRANIAN CONST. art. 21, § 4.

147. KONST. SSSR art. 50.

148. A "claw-back" clause may be defined as a provision that limits or qualifies a given civil and political right. For example, Article 50 of the USSR Constitution provides: "In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press, of assembly, of meetings, and of street marches, and demonstrations." *Id.* art.

freedom of speech and of the press only in accordance with the people's interests and for the purpose of strengthening and developing the socialist system.¹⁴⁹ Similarly, citizens of the Soviet Union are guaranteed freedom of scientific, technical and artistic creation, but these too must be "in accordance with the goals of communist construction."¹⁵⁰

Under the Iranian Constitution, free expression of ideas through publications and the press is a public right. As with the Soviet Constitution, the claw-back clause in the Iranian Constitution allows the exercise of this freedom only insofar as it is neither contrary to Islamic principles nor detrimental to public rights.¹⁵¹ Further, the mass media (radio and television) are allowed the free diffusion of information and views, but only in accordance with Islamic principles.¹⁵² The media function under the joint supervision of the judiciary, the legislature and the executive.¹⁵³

C. Freedom of Religion

The Soviet Constitution guarantees the right of citizens to profess any religion and to conduct religious worship. This freedom of religion includes the freedom to reject any religion. Therefore, citizens may refuse to profess any religion and may even engage in atheistic propaganda.¹⁵⁴ Even though Soviet law grants citizens the right to profess any religion, the socialist ideology tends to view religion as a set of

50, para. 1. In this article, the clause "In accordance with the interests of the people and in order to strengthen and develop the socialist system" is the claw-back clause that limits and qualifies the freedom stated in that Article.

149. See J. HAZARD, *supra* note 78, at 63 (arguing that Soviet authorities have used the suppression of speech against citizens who have no desire to upset the regime but who merely wanted to grumble against some detail immensely important to them); see also Osakwe, *supra* note 111, at 272-75.

150. KONST. SSSR art. 47, para. 1; see also Osakwe, *supra* note 111, at 271 ("The Soviet political system operates on the philosophical premise that science, technology and art must serve the needs and interests of the people and promote the political goals of the society. An artistic creation that does not project socialist realism is not within the coverage of Article 47.").

151. IRANIAN CONST. art. 24.

152. While Islamic principles may deem it appropriate to prohibit the publication and distribution within Iran of a book viewed as blasphemous to the doctrine of Islam, the act of issuing a death threat against the author who happens to be a citizen of another country stretches the Islamic concept of freedom of speech to an unacceptable limit. See N.Y. Times, Feb. 15, 1989, at A1, col. 5.

153. IRANIAN CONST. art. 175, para. 1; see also H. AFSHAR, *supra* note 61, at 249-51 (showing the importance of the press to the success of the Islamic Revolution and the Islamic government's control of the forces by banning all publications and asking publishers to reapply to the government to obtain the right to publish).

154. KONST. SSSR art. 52, para. 1.

unscientific beliefs that confuses the theory of social development. Moreover, organized religions present a real challenge to the authority of the Soviet leadership. The state therefore allows and encourages "a vigorous campaign against religious belief on the ground that the natural sciences disprove the existence of God."¹⁵⁵ The constitution further states that in the Soviet Union, there is a separation between the state and the church as well as between the school and the church. Under this doctrine of separation, the state cannot establish and the schools cannot teach religion in any form.

The official religion of Iran is Islam and the Shi'i school of thought. While the Iranian Constitution declares that this school of thought shall remain the immutable official school of Iran, other Islamic schools of thought are to be accorded full respect. The followers of each Islamic school of thought are free to act, worship, marry, divorce, inherit, bequest and receive religious education according to their beliefs. The courts will respect and enforce the respective jurisprudence of each school of thought on matters of personal status (marriage, divorce, inheritance and bequests). In addition, in areas of Iran where the followers of a certain Islamic school of thought constitute the majority, local regulations may be enacted in accordance with the respective school of thought.¹⁵⁶

While all Islamic schools of thought enjoy equal protection, there are only three other religious minorities that the Iranian Constitution recognizes: Zoroastrians, Jews and Christians.¹⁵⁷ These recognized religious minorities have the constitutional right to freely perform their religious ceremonies and may act according to their beliefs in matters of personal status (marriage, divorce, inheritance and bequests) and may receive religious education. Even though a separate provision in the constitution requires that the government and all muslims treat non-muslims in an ethical fashion and respect their human rights,¹⁵⁸ it is not clear from the text of the provision whether the phrase "non-muslims" include all religious minorities or only the recognized ones.

Obviously, the Iranian Constitution rejects the separation of state and the religion of Islam. The principles of Islam determine the nature of the state, its laws and its institutions. Likewise, there is no separation between schools and the religion of Islam. Islamic education is an inseparable part of education and children are required to learn Arabic, the language of the Koran and of Islamic learning and

155. J. HAZARD, *supra* note 7, at 233. For similar comments, see J. RESHETAR, *supra* note 47, at 290.

156. IRANIAN CONST. art. 12.

157. *Id.* art. 13.

158. *Id.* art. 14.

culture.¹⁵⁹

It may be argued that the freedom of religion under the two constitutions is uneven, if not fundamentally different. For instance, the Soviet Union Constitution allows the propagation of atheism, the Iranian Constitution does not. In the Soviet Union, the state is separated from religion; in Iran, it is not. But there is another way to look at this comparison. Under both constitutions, neither the state nor schools are separated from the state ideology. In the Soviet Union, both the state and schools are inseparable from communism; in Iran, they are inseparable from Islam. In other words, communism in the Soviet Union and Islam in Iran serve similar purposes: they define the nature of their state; they determine the identity of their society; they shape the future of their destiny.

D. Freedom of Association

Human beings are by nature associative; they form groups to protect and advance their political, social, cultural and economic interests. While in market-oriented democratic states, group activity is essential both to conducting economic enterprise and to influencing government decision-making processes including law making, in ideological states group activity is allowed to promote ideological interests. Accordingly, any group formation or associative activity incompatible with or repugnant to state ideology is prohibited. In both Iran and the Soviet Union, the right to associate is subject to the respective ideologies.

In the Soviet Union, the right to associate in public organizations is granted provided these organizations serve the aims of building communism.¹⁶⁰ If an associative body promotes communism, its right to exist, its political activity and its initiative are protected. In fact, the state encourages the formation of associative bodies that provide concentrated activity to achieve ideological goals and weld people together with ideological consciousness. In addition to this right to association, the Soviet Constitution grants citizens the right to submit proposals to state bodies and public organizations for improving their activity.¹⁶¹ Such proposals may even criticize state bodies and public organizations for any shortcomings in their work. This right to submit proposals and to criticize official shortcomings is indeed a right to petition except

159. *Id.* art. 16.

160. KONST. SSSR art. 51, para. 1; see also J. HAZARD, *supra* note 78, at 66 (suggesting that in making sure the exercise of this right of association serves the aim of building communism, the Soviet state requires every association, regardless of purpose, to be licensed).

161. KONST. SSSR art. 49, para. 1.

that the right must be exercised within the ideological confines. To facilitate the exercise of this right, the constitution forbids any persecution for criticism.

Under the Iranian Constitution, the right to association has similar ideological constraints: citizens have a right to form political and professional associations provided they do not violate the criteria of Islam, or the basis of the Islamic Republic.¹⁶² Even public gatherings and marches may freely be held provided they are not detrimental to the fundamental principles of Islam.¹⁶³ These constraints on the right to association are necessary to preserve the Islamic roots of the Republic.

VI. FOREIGN POLICY

Both constitutions contain a separate chapter on foreign policy. The Soviet Constitution sets forth guidelines that would determine the Soviet Union's relations with other states. Most of these guidelines simply restate broad and well-recognized principles of international law, such as sovereign equality, territorial integrity of states, peaceful settlement of disputes, non-intervention in internal affairs, the right of self-determination, fulfillment in good faith of obligations arising from international agreements, etc.¹⁶⁴ These principles of international law are derived from the Charter of the United Nations, to which the Soviet Union is a signatory.¹⁶⁵ This constitutional recognition of the basic principles of international law is designed to show both to the Soviet people and to the international community that the Soviet Union conducts a principled foreign policy.¹⁶⁶

Even if the restatement into the Soviet Constitution of the basic principles of international law is unfeigned, the Soviet Constitution contains several other foreign policy guidelines that the government may invoke to justify its deviation from the standards of international law. For example, the constitution allows the government to support "the struggle of peoples for national liberation and social progress."¹⁶⁷ At one level, supporting the struggle of peoples for national liberation is a high moral principle that may even be lawful under international law. At another level, however, the standard may be easily abused not

162. IRANIAN CONST. art. 26.

163. *Id.* arts. 26, 27.

164. KONST. SSSR art. 29.

165. U.N. CHARTER art. 2, para. 4 ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state . . .").

166. This author believes that this has not always been the case.

167. KONST. SSSR art. 28, para. 2.

only to intervene into the internal affairs of another country, but to outright violate its territorial integrity. This pretext is also available to support socialist groups in foreign countries that are allegedly fighting for "social progress."¹⁶⁸

Furthermore, the foreign policy of the Soviet Union is aimed at consolidating the positions of world socialism.¹⁶⁹ In order to achieve this goal, the Soviet Union promotes and strengthens friendship with other socialist countries, and takes an active part in socialist economic integration.¹⁷⁰ These foreign policy standards may explain the Soviet support for socialist regimes all over the world. Again, socialist countries may have good reasons to create and protect their group solidarity and the Soviet Union, being the first and probably the most prosperous socialist country, may have the best of motives to share its experience with emergent or less prosperous socialist countries. But this principle of socialist internationalism provides the Soviet Union with a justification, if not self-righteous authority, to play the role of a "big brother" and thus establish its domination over the socialist community.

While the Soviet Constitution couches its foreign policy principles in terms of international law, the Iranian Constitution does not even use the phrase "international law" in its dealing with foreign policy.¹⁷¹ Instead it invokes a moral principle as the ideal principle of Iran's foreign policy: the universal happiness of all mankind.¹⁷² It further states that the attainment of an independent, free and just government is the right of all peoples of the world.¹⁷³ Accordingly, it rejects all forms of domination. Under the constitution, the government cannot lawfully enter into any agreement that would impose foreign domination over the natural resources, economy, army or culture of Iran.¹⁷⁴ In order to prevent foreign domination and to preserve an independent government, the constitution mandates that Iran adopt a policy of non-alignment with respect to superpowers.¹⁷⁵ This strong emphasis on an independent government free from all foreign influence comes from a belief generally held by the Iranian public that under the Shah, Iran was neither free nor independent of foreign influence.

Even though rejection of foreign domination is the main theme of Iran's foreign policy, the constitution contains other foreign policy

168. *Id.*

169. *Id.* art. 30.

170. *Id.* arts. 28, para. 2; 30.

171. IRANIAN CONST. arts. 152-155.

172. *Id.* art. 154, para. 1.

173. *Id.* art. 154, para. 2.

174. *Id.* art. 153.

175. *Id.* art. 152.

principles similar to those embodied in the Soviet Constitution. For example, it espouses the principle of complete non-interference in the internal affairs of other countries, but it also promises to support the just struggles of the oppressed and deprived people in every corner of the globe.¹⁷⁶ Thus, both constitutions modify the principle of non-interference and create an exception to support the struggle of the peoples for freedom and social justice.

Thus, just as the Soviet foreign policy promotes the principle of socialist internationalism, the Iranian foreign policy appears to support the idea of Islamic internationalism. While the principle of socialist internationalism protects socialist governments, the Iranian view of Islamic internationalism is to protect "all Muslims" rather than their governments.¹⁷⁷ This distinction is significant. It appears that Iran might encourage "all Muslims" to work towards instituting, in their respective countries, a form of government based on the concept of Islamic egalitarianism. This might justify the exportation of the Iranian Revolution to other Islamic communities. The Iranian Clergy seems to believe that only when other Islamic states have founded their governments on the principles of Islamic egalitarianism can there emerge a true and meaningful Islamic solidarity. In order to justify Islamic internationalism, the Iranian Constitution invokes the following injunction of the Koran: "And we wish to show favor to those who have been oppressed upon earth, and to make of them leaders and inheritors."¹⁷⁸

VII. CONCLUSION

The Iranian Constitution is founded upon the concept of Islamic egalitarianism. Islamic egalitarianism is distinguishable from secular socialism in that it is a spiritual ideology that builds a permanent relationship between man and God and provides a moral structure for individual and collective behavior. Yet it shares several characteristics with secular socialism contained in the 1977 Soviet Union Constitution. Just like the Soviet Union Constitution, the Iranian Constitution rejects capitalist modes of production and distribution, and it allows the Islamic state to control the main means of production. Further, it creates a centralized structure of authority whereby the state power remains with the guardians of ideology who give direction and stability to policies based upon Islam and distributive justice. The Iranian Con-

176. *Id.* art. 154, para. 2.

177. *Id.* art. 152. Islamic teachings have always emphasized the unity of the *umma* (the community of believers). See Dessouki, *The Islamic Resurgence: Sources, Dynamics and Implications*, in *ISLAMIC RESURGENCE IN THE ARAB WORLD* 6 (A. Dessouki ed. 1982).

178. *Koran* 28:5. This verse is cited in the preamble to the Iranian Constitution.

stitution assumes to provide all citizens with the basic necessities of life, but it restricts civil and political freedoms, which may be exercised only within the constraints of Islamic morality. In foreign policy, the Iranian Constitution promises to strengthen the international Islamic community and provides assistance to the oppressed people of the world.

Islamic egalitarianism embodied in the Iranian Constitution presents an alternative to both capitalism and secular socialism and redefines the obligations of an Islamic state. Although some Islamic states have experimented in the past with Islamic egalitarianism, the Iranian example is unique because Islamic egalitarianism in Iran has the blessings of fundamentalists who might have been its natural opponents. If the Iranian Revolution succeeds in establishing a stable and workable constitutional system, it may propose a similar model to other Islamic communities. This success may also give a new life and perhaps revitalized respectability to the idea of joining Islam with modern egalitarian principles.

But right now, the Iranian Revolution is still fragile. How the revolution will unfold itself in the future and how history will judge it are questions that invite both conjecture and curiosity. Iran is emerging out of its international isolation, and the brutal war between Iran and Iraq has seemingly come to an end. Nonetheless, the Iranian revolution has few friends and many enemies. It has not yet solved the country's economic problems; its record on human rights remains sullied. Even if it succeeds in protecting itself from external enemies, it may collapse under its own weight, particularly if the government alienates its people. Should the revolution falter and Islamic egalitarianism disintegrate, the Iranian Constitution may eventually find its place in the catacomb of failed ideas.

